

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider Refinements to and Further Development of the Commission's Resource Adequacy Requirements Program.

FILED  
PUBLIC UTILITIES COMMISSION  
DECEMBER \_\_, 2005  
SAN FRANCISCO, CALIFORNIA  
RULEMAKING 05-12-\_\_

**ORDER INSTITUTING RULEMAKING****1. Summary**

We open this rulemaking to continue our efforts to ensure reliable and cost-effective electricity supply in California through refinement and augmentation of our adopted program of resource adequacy requirements (RAR). Under this program, established pursuant to Decision (D.) 04-01-050, D.04-10-035, and D.05-10-042, investor-owned utilities (IOUs) as well as the electric service providers (ESPs) and community choice aggregators (CCAs) operating within the IOUs' service territories (collectively, load serving entities or LSEs) are required to demonstrate that they have acquired the resources needed to meet their forecasted retail customer load plus a reserve margin.

The Commission has determined that certain RAR program elements that were proposed in earlier proceedings offer the prospect of more effective achievement of RAR goals but require further consideration before they can be

adopted. This is the successor to the RAR portion of Rulemaking (R.) 04-04-003,<sup>1</sup> and it will be the forum in which we consider such program elements. In particular, it will be the forum for consideration of local RAR. In addition, this rulemaking will be the primary forum in which the Commission reviews the requirements of Assembly Bill (AB) 380 (Stats. 2005, Chapter 367) and takes the steps necessary to ensure full implementation of this legislation. Finally, this is the forum for consideration of previously identified “second generation” RAR topics that include multi-year RAR, capacity tagging, and capacity markets.

The predecessor RAR proceeding (R.04-04-003) initially named the three large California IOUs as respondents. D.05-03-013 (as modified by D.05-03-035 and D.05-08-029) modified the April 1, 2004 order that instituted that rulemaking by naming registered ESPs and CCAs as respondents. Because this proceeding is the forum for implementing AB 380, which requires that RAR be established for all LSEs, we will adopt a more expansive approach and name as respondents all LSEs as defined in Pub. Util. Code § 380(j). We invite the participation of all parties who are interested in these efforts, including those who have actively participated in R.04-04-003 as well as municipal utilities, which may have an interest in how local area requirements are established for LSEs subject to our jurisdiction.

In D.05-10-042, we noted that the California Independent System Operator (CAISO) and the California Energy Commission (CEC) will each play an important role in the implementation and ongoing operation of the RAR

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<sup>1</sup> *Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning*, dated April 1, 2004.

program. We invite the CEC to join us in this proceeding by continuing the collaborative approach that both agencies pursued in the development of RAR in R.04-04-003. We also invite and welcome the active participation of the CAISO in this rulemaking, as careful coordination of the activities of the CAISO and those of this Commission is indispensable to the success of the RAR program.<sup>2</sup>

## **2. Background**

D.04-01-050, D.04-10-035, and D.05-10-042 established the RAR policy framework and determined the basic program parameters. However, as the Commission stated in the latter decision:

While we believe that this decision is a significant step forward, it does not represent the final word for resource adequacy in California. More work needs to be done. We have deferred action on certain RAR program elements that have been proposed because, despite their promise of more effectively promoting achievement of RAR program goals, they require further consideration before they can be implemented. In addition, D.04-10-035 identified important “second generation” RAR topics, including multi-year RAR and resource tagging, and these topics warrant full consideration in the near future. Further consideration of RAR issues before this Commission will take place in a new, more focused proceeding.  
(D.05-10-042, p. 3.)

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<sup>2</sup> We note that AB 380 provides that “[t]he commission, in consultation with the Independent System Operator, shall establish resource adequacy requirements for all load serving entities.” (Pub. Util. Code § 380(a).) We expect that such consultation will include, but not be limited to, the CAISO’s timely participation as a party to this proceeding.

### **3. Preliminary Scoping Memo**

In this Preliminary Scoping Memo, we briefly describe the issues to be considered in this proceeding and the timetable for resolving the proceeding. To provide overarching guidance to parties regarding the scope of this rulemaking, we repeat our policies for the RAR program as described in D.05-10-042:

First, the Commission seeks through RAR to ensure that the infrastructure investment required for reliability actually occurs. Second, the Commission seeks to ensure that the generation capacity made possible through that investment is available to the grid at the times and at the locations it is needed. Third, the Commission intends that capacity must be sufficient for stressed conditions, i.e., sufficient generation should be available under peak demand conditions even when there are unexpected outages. Finally, the Commission noted that the traditional utility role in procurement included the responsibility to provide reliable service at least cost, and that this is one of the “same issues” of traditional resource procurement that RAR seeks to address. Thus, the concept embodied in the phrase “reliability at any cost” is not a policy option. Ultimately, measures that are proposed to promote greater grid reliability should be evaluated by weighing their expected costs against the value of their expected contribution to reliability. (D.05-10-042, pp. 7-8.)

Our overall objective for this proceeding is to give effect to the foregoing policies for RAR.

#### **3.1 Local RAR**

In D.05-10-042, the Commission reaffirmed its intention to establish a local capacity component of the RAR program, and it further declared its intention that the local RA component should be implemented for compliance year 2007. In accordance with D.04-10-035, the year-ahead compliance filings for 2007 are to

be made by LSEs on September 30, 2006.<sup>3</sup> We intend that these compliance filings should demonstrate fulfillment of the local capacity requirements that will be defined in this proceeding. At the same time, as the Commission has recognized, it is important that LSEs have sufficient time after their RA obligations have been determined to make their final resource acquisitions. It is therefore apparent that the local RA obligations need to be determined well in advance of the September 30 filings.

Thus, development and implementation of the local dimension of the RAR program is the centerpiece and the first priority of this rulemaking. We intend to adopt local RAR program elements by June 2006. While it is our intention to timely resolve all topics in this rulemaking so that this vital resource program can achieve its potential effectiveness as soon as possible, it is critical that consideration of the topics listed below not interfere with timely resolution of the local capacity requirements issues. Accordingly, it may be appropriate to consider the issues in this proceeding in phases, with local capacity requirements constituting the first phase. We delegate to the Assigned Commissioner and the Administrative Law Judge (ALJ) the determination of whether and to what extent to establish such phases of this proceeding.

### **3.2 Implementation of AB 380**

As the Commission noted in D.05-10-042, it is necessary to review the requirements of recently enacted AB 380 and take the steps necessary to ensure full implementation of this legislation. Among other things, AB 380 requires that

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<sup>3</sup> September 30, 2006 is a Saturday. Accordingly, the LSE's year-ahead filings for 2007 are due on October 2, 2006.

the Commission establish RAR for all LSEs. However, the current RAR program applies only to the three major California IOUs and the ESPs and CCAs operating within their service territories.

We recognize that the current RAR program may not be appropriate for the smaller and multi-jurisdictional IOUs. This rulemaking will be the primary forum to address the manner in which the Commission meets its obligation to establish RAR applicable to those LSEs that are not subject to the RAR program adopted in D.04-01-050, D.04-10-035, and D.05-10-042.

### **3.3 Compliance Topics**

The Commission adopted the policy that a penalty equal to 300% of the cost for new capacity (150% for 2006 only) is an appropriate sanction for an LSE's failure to acquire the capacity needed to meet its RA obligation. (D.05-10-042, pp. 93-94.) In this rulemaking, we will consider ways to give definition and clarity to this policy so that all LSEs and their resource suppliers will have a clearer understanding of their procurement obligations and the consequences of noncompliance with those obligations. We will also address concerns, raised in comments on the draft decision in Phase 2 of the RAR portion of R.04-04-003, that noncompliance penalties imposed by this Commission may accrue to the General Fund of the State of California rather than be used to offset procurement costs that may have been incurred to replace the capacity shortfall associated with an LSE's noncompliance.

### **3.4 Other Topics Identified in D.05-10-042**

D.05-10-042 identified numerous topics for which further consideration in a future RAR proceeding would be appropriate. Also, we recognize that implementation issues pertaining to the LSEs' compliance filings may arise for which Commission action may be appropriate. We do not attempt to list all such

topics here. As just one example, we note that the Commission stated that it would provide for further consideration of the need for an adder for determining the capacity value of newer wind technologies to compensate for data lags associated with the introduction of those new technologies. This rulemaking will be the forum consideration of such topics.

### **3.5 General Order**

D.04-10-035 announced the Commission's expectation that a "tangible work product" of future proceedings would be the creation of a new Commission general order that assembles the Commission's RAR regulations into a single source document. (D.04-10-035, pp. 44-45.) D.05-10-042 noted that "it would be helpful for our staff to present a general order that compiles into a single source document the elements of the RAR program." (D.05-10-042, p. 97.) Our staff is preparing a draft general order in response to these statements by the Commission. We will provide for comments and replies on this draft general order, and direct the assigned ALJ to establish a schedule for such comments and replies after the draft general order is published by staff.

### **3.6 Second Generation RAR Topics**

D.04-10-035 identified certain "second generation" topics that, at the time that decision was issued, warranted deferred consideration. These include a multi year forward commitment concept and a resource tagging and trading concept. Subject to the priority consideration of local resource adequacy requirements, we will consider such topics in this rulemaking.

We note that on August 25, 2005, our staff issued a white paper on the subject of capacity markets and that comments and replies pertaining to the white paper were filed in R.04-04-003 on September 23, 2005 and October 11, 2005, respectively. We are ordering that the record of R.04-04-003 as to resource

adequacy be available in this rulemaking. Therefore, the white paper and the comments and replies are a part of the record herein.

#### **4. Category of Proceeding**

The Commission's Rules of Practice and Procedure require that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for hearing.<sup>4</sup> As a preliminary matter, we determine that this proceeding is ratesetting because our consideration and approval of the refinements to and further development of the RAR program will impact respondent IOUs' rates.<sup>5</sup> As with earlier RAR proceedings, it appears that the issues may be resolved through a combination of workshops and formal comments. As provided in Rule 6(c)(2), any person who objects to the preliminary categorization of this rulemaking as "ratesetting" or to the preliminary hearing determination, shall state its objections in its PHC Statement. After the PHC in this matter, the Assigned Commissioner will issue a scoping ruling making a final category determination; this final determination is subject to appeal as specified in Rule 6.4.

#### **5. Schedule**

We direct the ALJ to schedule a PHC to occur as soon as practicable after the proposals for local RAR are submitted as directed in D.05-10-042.<sup>6</sup> At that

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<sup>4</sup> Rule 6(c)(2).

<sup>5</sup> Rule 5(c).

<sup>6</sup> "To ensure that we are presented with a comprehensive proposal for implementation of a local RAR that can be timely implemented for 2007, we hereby direct the IOUs and authorize other parties to file such proposals in this or the successor RAR proceeding within 75 days of the date of this order." (D.05-10-042, p. 81.) This is the "successor

*Footnote continued on next page*



PHC, the parties should be prepared to discuss the issues addressed in this order, as well as any issues raised in their PHC statements filed in advance of the PHC, including their proposed schedules and critical-path timetables.

The preliminary schedule for local resource adequacy is set forth below. Subject to further determination by the Assigned Commissioner and the ALJ, other issues in this proceeding may be considered according to this schedule to the extent that such consideration does not interfere with timely consideration and resolution of local RAR. This schedule will be discussed at, and further refined following, the PHC. Similarly, the schedule for consideration of issues not addressed according to the schedule for local RAR will be taken up at the PHC. This proceeding will conform to the statutory case management deadline for ratesetting matters, set forth in Pub. Util. Code § 1701.5, and the assigned Commissioner will provide more guidance on this point in the Scoping Memo to be issued following the PHC.

Local RAR proposals	January 24, 2006
PHC Statements Due	January, 2006
Prehearing Conference	January, 2006
Scoping Memo	February, 2006
Workshops	January - March, 2006
Comments and replies	March-April, 2006

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proceeding” referenced in that decision, and such proposals should be filed in this docket, not in R.04-04-003. By letter dated December 8, 2005, the IOUs jointly requested a two-week extension of time to comply with the requirement. The Executive Director approved the extension.

Draft Decision on Local RAR	May 16, 2006
Final Decision on Local RAR	June 15, 2006

## **6. Parties and Service List**

Interested persons will have 20 days from the date of mailing to submit a request to be added to the service list for this proceeding. Since our order names electric corporations, ESPs, and CCAs respondents to this rulemaking, by virtue of that fact they will appear on the official service list. We will also serve this order on those who are on the service lists for R.04-04-003.

Within 20 days of the date of mailing of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking should send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California, 94102 (or ALJ\_Process@cpuc.ca.gov) asking that his or her name be placed on the official service list for this proceeding. The service list will be posted on the Commission's web site, [www.cpus.ca.gov](http://www.cpus.ca.gov), as soon as possible.

Any party interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in Los Angeles at (213) 649-4782 or in San Francisco at (415) 703-2074, (866) 836-7875 (TTY - toll free) or (415) 703-5282 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

The Commission recently adopted rules for the electronic service of documents related to its proceedings. Rule 2.3.1 of the Rules of Practice and Procedure may be viewed at [http://www.cpus.ca.gov/PUBLISHED/RULES\\_PRAC\\_PROC/46095-02.htm#P341\\_33469](http://www.cpus.ca.gov/PUBLISHED/RULES_PRAC_PROC/46095-02.htm#P341_33469). All parties shall comply with the requirements of this rule.

**7. Ex Parte Communications**

This ratesetting proceeding is subject to Pub. Util. Code § 1701.3(c), which prohibits *ex parte* communications unless certain requirements are met (see also, Rule 7(c)). An *ex parte* communication is defined as “any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter.” (Pub. Util. Code § 1701.1(c))(4).) Commission rules further define the terms “decisionmaker” and “interested person” and only off-the-record communications between these two entities are “*ex parte* communications.”<sup>7</sup>

By law, oral *ex parte* communications may be permitted by any commissioner if all interested parties are invited and given not less than three business days’ notice. If such a meeting is granted to any individual party, all other parties must be granted individual *ex parte* meetings of a substantially equal period of time and shall be sent a notice at the time the individual request is granted. Written *ex parte* communications may be permitted provided that copies of the communication are transmitted to all parties on the same day. (Pub. Util. Code § 1701.3(c); Rule 7(c).) In addition to complying with all of the above requirements, parties must report *ex parte* communications as specified in Rule 7.1.

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<sup>7</sup> See Rules of Practice and Procedure, Rules 5(e), 5(f), and 5(h).

Therefore, **IT IS ORDERED** that:

1. The Commission institutes this rulemaking on its own motion to continue its efforts to ensure reliable and cost-effective electricity supply in California through refinement and further development of its adopted program of resource adequacy requirements.

2. The load-serving entities named in Appendix A are respondents to this proceeding.

3. This is the successor proceeding to the Commission's procurement rulemaking, R.04-04-003, as to resource adequacy requirements. The record developed in that proceeding as to resource adequacy requirements is fully available for consideration in this proceeding.

4. The Executive Director shall cause this Order Instituting Rulemaking (OIR) to be served on Respondents, the California Energy Commission, the California Independent System Operator, municipal utilities listed in Appendix B and all parties to R.04-04-003.

5. Within 20 days from the date of mailing of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking shall send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California, 94102 (or ALJ\_Process@cpuc.ca.gov) asking that his or her name be placed on the official service list for this proceeding. Parties shall also appear at the first prehearing conference (PHC) in order to enter an appearance in the proceeding.

6. The category of this rulemaking is preliminarily determined to be "ratesetting." Any person who objects to the preliminary categorization of this rulemaking as "ratesetting" shall state its objections in its PHC Statement. Any

person who takes the position that evidentiary hearings are necessary shall so state in its PHC Statement along with the grounds for such position.

7. Respondents shall, and other parties may, file comments on the issues identified in the OIR in their prehearing conference statements which are due January 13, 2006. Subsequent filings or testimony shall be submitted in accordance with the schedule developed at the first PHC, or in a subsequent ruling, as applicable.

8. The Assigned Commissioner or the ALJ may make any revisions to the scheduling determinations made herein as necessary to facilitate the efficient management of the proceeding.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX A**  
**RESPONDENT LOAD SERVING ENTITIES**  
**(Public Utilities Code Section 380(j))**

**Electric Corporations**

David Coyle           (909)  
General Manager  
Anza Electric Co-Operative, Inc.  
58470 Highway 371  
Anza, CA 92539-1909

Raymond R. Lee       (906)  
Chief Operating Officer  
Mountain Utilities  
P. O. Box 205  
Kirkwood, CA 95646

Brian Cherry           (39)  
Director, Regulatory Relations  
Pacific Gas and Electric Company  
B10C  
P. O. Box 770000  
San Francisco, CA 94177

Douglas Larson       (901)  
Vice President, Regulation  
PacifiCorp  
201 S, Main  
Salt Lake City, UT 84140

Robert Marshall       (908)  
General Manager  
Plumas Sierra Rural Electric Coop.  
P. O. Box 2000  
Portola, CA 96122-2000

Steve Rahon (902)  
Director, Tariff & Regulatory Accounts  
San Diego Gas & Electric Company  
CP32C  
8330 Century Park Court  
San Diego, CA 92123-1548

Mary Simmons (903)  
Rate Regulatory Relations  
Sierra Pacific Power Company  
P. O. Box 10100  
6100 Neal Road  
Reno, NV 89520-0026

Akbar Jazayeiri (338)  
Director of Revenue & Tariffs  
Southern California Edison Company  
P. O. Box 800  
2241 Walnut Grove Avenue  
Rosemead, CA 91770

Ronald Moore (133)  
Southern California Water Company  
630 East Foothill Blvd.  
San Dimas, CA 91773



**Electric Service Providers**

Michael Mazur (1350)  
3Phases Energy Services  
2100 Sepulveda Blvd., Suite 37  
Manhattan Beach, CA 90266

Frank Annunziato (1158)  
American Utility Network (A.U.N.)  
10705 Deer Canyon Drive  
Alta Loma, CA 91737

Lili Shahriari (1355)  
AOL Utility Corp.  
12752 Barrett Lane  
Santa Ana, CA 92705

Stacy Aguayo (1361)  
APS Energy Services Company, Inc.  
400 E. Van Buren Street, Suite 750  
Phoenix, AZ 85004

Randall Prescott (1366)  
BP Energy Company  
501 Westlake Park Blvd.  
Houston, TX 77079

Kevin Boudreaux (1362)  
Calpine PowerAmerica-CA, LLC  
4160 Dublin Blvd.  
Dublin, CA 94568

George Hanson (1367)  
City of Corona  
Department of Water and Power  
730 Corporation Yard Way  
Corona, CA 92880

Inger Goodman (1092)  
Commerce Energy, Inc.  
600 Anton Blvd., Suite 2000  
Costa Mesa, CA 92626

Bill Chen (1359)  
Constellation NewEnergy, Inc.  
Two California Plaza  
South Grand Avenue, Suite 3800  
Los Angeles, CA 90071

Hank Harris (1360)  
Coral Power, L.L.C.  
4445 Eastgate Mall, Suite 100  
San Diego, CA 92121

Adrian Pye (1341)  
Energy America, LLC  
263 Tresser Blvd.,  
One Stamford Plaza, Eighth Floor  
Stamford, CT 06901

Modesto Irrigation District (1151)  
Modesto Irrigation District Mid. Water  
1231 Eleventh Street  
P.O. Box 4060-95352  
Modesto, CA 95354

Robert S. Nichols (1063)  
New West Energy  
P.O. Box 61868  
Mailing Station ISB 665  
Phoenix, AZ 85082-1868

E. J. Wright (1369)  
Occidental Power Services, Inc.  
5 Greenway Plaza, Suite 110  
Houston, TX 77046

Thomas Darton (1365)  
Pilot Power Group, Inc.  
9320 Chesapeake Drive, Suite 112  
San Diego, CA 92123

Rick C. Noger (1370)  
Praxair Plainfield, Inc.  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

Mike Kasaba (1368)  
Quiet Energy  
3311 Van Allen Place  
Topanga, CA 90290

Megan Saunders (1364)  
Sempra Energy Solutions  
101 Ash Street, HQ09  
San Diego, CA 92101-3017

Kerry Hughes (1351)  
Strategic Energy, Ltd.  
7220 Avenida Encinas, Suite 120  
Carlsbad, CA 92209

In addition, any electric service provider that, subsequent to the date of the order instituting this rulemaking, becomes registered to provide services within the service territory of one or more of the respondent electric corporations through direct access transactions shall, upon such registration, become a respondent to this proceeding.

### **Community Choice Aggregators**

Any community choice aggregator that, subsequent to the date of the order instituting this rulemaking, becomes registered to provide services within the service territory of one or more of the respondent electric corporations through community choice aggregation transactions shall, upon such registration, become a respondent to this proceeding.

**(END OF APPENDIX A)**